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ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT  
NORTHERN CALIFORNIA

VICTOR CARBAJAL, RODOLFO	)	Case No: <a href="#">5:08-cv-1611</a>
HERNANDEZ, ISRAEL LOPEZ,	)	
FRANCISCO PLANCARTE, JESUS	)	FIRST AMENDED COMPLAINT FOR
PLANCARTE, ANTONIO RUIZ, JOSE	)	DAMAGES AND DEMAND FOR JURY
VALDEZ, VICTOR VELAZQUEZ	)	TRIAL:
FERNANDO CHAVEZ AND DOES 1-10	)	1) Violation of California Labor Code
Plaintiffs,	)	Section 510;
	)	2) Violations of the Federal Fair Labor
vs.	)	Standards Act;
ROBIE H DOBKINS, PLUMBERS ON	)	3) Violation of California Business and
CALL INC. GRANT J HALLSTROM,	)	Professions Code Section 17200; and
AMERICA'S COPPER REPIPE SPECIALIST)	)	4) Violation of California Labor Code
INC. dba REPIPE SPECIALIST INC., AND	)	Section 201; and
DOES 1-10	)	5) Violation of California Labor Code
Defendants	)	Section 226
	)	6) Negligence

**NATURE OF CLAIM**

This is an action on behalf of VICTOR CARBAJAL, RODOLFO HERNANDEZ,  
ISRAEL LOPEZ, FRANCISCO PLANCARTE, JESUS PLANCARTE, ANTONIO RUIZ,  
JOSE VALDEZ, VICTOR VELAZQUEZ, who have been employed on an hourly basis by

1 ROBIE H DOBKINS dba PLUMBERS ON CALL INC., GRANT J HALLSTROM dba  
2 AMERICA'S COPPER REPIPE SPECIALIST INC., dba REPIPE SPECIALIST INC. AND  
3 DOES 1-10 at various periods four years prior to the filing of this Complaint, seeking damages  
4 arising from employer's failure to pay overtime as required by the Fair Labor Standards Act and  
5 the California Wage Orders and statutes. Plaintiffs seeks compensatory damages for unpaid  
6 wages under California Labor Code and Wage Orders, liquidated damages under 29 U.S.C.  
7 §216(b), waiting time penalties under California Labor Code § 203, damages for inadequate pay  
8 statements under California Labor Code Section 226, and attorney's fees, costs, pre judgment  
9 interest pursuant to California Labor Code § 1194(a) and 29 U.S.C. § 216(b), damages for  
10 negligence and restitution under California Unfair Trade Practices Act under California Business  
11 and Professions Code § 17203.

## 12 PARTIES

- 13 1. At all times relevant herein, Plaintiff Victor Carbajal is an individual resident of San Jose,  
14 California.
- 15 2. At all times relevant herein, Plaintiff Rodolfo Hernandez is an individual resident of San  
16 Jose, California.
- 17 3. At all times relevant herein, Plaintiff Israel Lopez is an individual resident of San Jose,  
18 California.
- 19 4. At all times relevant herein, Plaintiff Francisco Plancarte is an individual resident of San  
20 Jose, California.
- 21 5. At all times relevant herein, Plaintiff Jesus Plancarte is an individual resident of San Jose,  
22 California.
- 23 6. At all times relevant herein, Plaintiff Antonio Ruiz is an individual resident of Redwood  
24 City, California.

- 1 7. At all times relevant herein, Plaintiff Jose Valdez is an individual resident of San Jose,  
2 California.
- 3 8. At all times relevant herein, Plaintiff Victor Vazquez is an individual resident of San Jose,  
4 California.
- 5 9. At all times relevant herein, Plaintiff Fernando Chavez is an individual resident of San  
6 Jose, California.
- 7 10. At all times relevant herein, Robie H. Dobkins is and was a managing agent with a  
8 corporation called Plumbers On Call, Inc. with was a joint employer with Defendant,  
9 Grant J. Hallstrom is a managing agent of America's Copper Repipe Specialist, Inc., dba  
10 Repipe Specialist Inc. Robie H. Dobkin has filed for bankruptcy protection.
- 11 11. At all times relevant herein, Defendant, Grant J. Hallstrom is a managing agent of  
12 America's Copper Repipe Specialist, Inc., dba Repipe Specialist Inc., in Glendale,  
13 California, with control over the Plaintiffs' work and pay.
- 14 12. At all times relevant herein, Plumbers on Call Inc., is a corporation headquartered in  
15 Campbell, California that operated as a joint employer with Defendant, Grant J. Hallstrom  
16 is a managing agent of America's Copper Repipe Specialist, Inc., dba Repipe Specialist  
17 Inc. Plumbers on Call Inc. has filed for bankruptcy protection.
- 18 13. At all times mentioned herein, Defendant America's Copper Repipe Specialist, Inc., dba  
19 Repipe Specialist Inc. is a corporation headquartered in Glendale California and joint  
20 employer with Plumbers On Call Inc. with respect to the claims asserted by Plaintiffs.
- 21 14. Individual Defendants DOES 1-10, at all times relevant herein, are, according to  
22 information and belief, owners, managers, directors, associates, related to, or employees  
23 of Defendants., having control over the Plaintiffs' work condition and work situation.

#### 24 **GENERAL ALLEGATIONS**

1 15. At all times relevant herein, Plaintiffs were employees of defendants, Plaintiffs were  
2 according to information and belief, employees of Defendants acting in the normal course  
3 and scope of their employment duties with Defendants.

4 16. During the course of Plaintiffs' employment with Defendants, Plaintiffs regularly worked  
5 in excess of 8 hours per day and more than 40 hours per week.

6 17. Plaintiffs were paid on an hourly basis.

7 18. Plaintiffs did not perform "exempt" duties in their position as construction workers with  
8 Defendants and thus were not subject to any exemption under the Fair Labor Standards  
9 Act, *29 CFR 541.112, 541.209 and 541.209*. The Plaintiffs were not even marginally  
10 responsible for management or administrative functions, and their primary job did not  
11 require them to exercise independent discretion and judgment or regularly require  
12 invention or imagination in a recognized field of artistic endeavor more than fifty percent  
13 of their working time.

14 19. At no time during the Plaintiffs' employment did Plaintiffs maintain any professional  
15 license with the state or practice any recognized profession, nor did Plaintiffs exclusively  
16 manage any division of Grant J. Hallstrom dba America's Copper Repipe Specialist Inc.,  
17 dba Repipe Specialist Inc, where they customarily and regularly exercised discretionary  
18 powers or perform services of management. Plaintiffs did not directly supervise any  
19 employees nor did he participate in the development of general administrative policies of  
20 Grant J. Hallstrom dba America's Copper Repipe Specialist Inc., dba Repipe Specialist  
21 Inc.

22 20. Plaintiffs were required to provide various tools and equipment necessary for the  
23 performance of the labor which they discharged and were not paid at least two times  
24 California the minimum wage.  
25

1 21. America's Copper Repipe Specialist Inc., dba Repipe Specialist Inc. had a duty to  
2 properly train and supervise their agents, including the other Defendants, to among other  
3 things require and ensure that Robie H. Dobkin and Plumbers on Call Inc. paid workers  
4 the correct wages including overtime wages as mandated by the FLSA.

5 22. At all times mentioned America's Copper Repipe Specialist Inc., dba Repipe Specialist  
6 Inc. and Robie H. Dobkin and Plumbers on Call Inc including though not limited to the  
7 forgoing reasons: they shared work space, jointly advertised, and America's Copper  
8 Repipe Specialist Inc. had almost complete control over the clients and economic success  
9 of Robie H Dobkin and Plumbers on Call Inc.

10 **COUNT ONE: VIOLATION OF CA LABOR CODE SECTION §510**

11 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

12 23. Plaintiffs re-allege and incorporate paragraphs 1-22 as if fully stated herein.

13 24. California Labor Code Section 501, applicable at all times relevant herein to Plaintiffs'  
14 employment by Defendants, provides that all employees are entitled to payment at the rate  
15 of time and one half for hours in excess of 8 in one day, or 40 hours in one week, and  
16 double time for hours in excess of 12 in one day.

17 25. During the course of employment with Defendants, Plaintiffs regularly worked in excess  
18 of 8 hours a day and 40 hours per week, however Defendants knowingly and willingly  
19 failed to pay Plaintiffs overtime wages as required by law.

20 26. Defendants also failed to pay overtime based on the correct "regular rate" which is based  
21 on a weighted average of all hourly rates including any hourly rates based on a piece rate  
22 computation.

23 27. Defendants failed to pay Plaintiffs (2) times the minimum wage when Plaintiffs provided  
24 and maintained hand tools and equipment customarily required by the plumbing industry.  
25 This violated IWC Wage Order 16-2001 which states at section (8)(B):

1  
2 When the employer requires the use of tools or equipment or  
3 they are necessary for the performance of a job, such tools  
4 and equipment shall be provided and maintained by the  
5 employer, except that an employee whose wages are at least  
6 two (2) times the minimum wage may provide and maintain  
7 hand tools and equipment customarily required by the  
8 particular trade or craft in conformity with Labor Code  
9 Section 2802.

10 28. California Labor Code Section 1194 provides that it is unlawful for employers not to  
11 make the required overtime payments identified in the preceding paragraph and that  
12 employees not paid such payments can recover any monies owed by civil action.

13 29. Defendants therefore owe Plaintiffs overtime wages not properly paid to Plaintiffs in an  
14 amount to be determined at trial.

15 30. Defendants have failed and refused and continue to fail and refuse to pay Plaintiffs the  
16 amount owed.

17 31. Defendants' failure to pay Plaintiffs the required sum violates the provisions of Labor  
18 Code Sections 510 and 1194 and is therefore unlawful.

19 32. Pursuant to Labor Code Section 1194(a), Plaintiffs requests that the court award Plaintiffs  
20 reasonable attorney's fees and costs incurred by him in this action.

21 **COUNT TWO: VIOLATION OF THE FAIR LABOR STANDARDS ACT**  
22 **FAILURE TO PROPERLY PAY OVERTIME WAGES**

23 33. Plaintiffs re-allege and incorporate paragraphs 1-32 as if fully stated herein.

24 34. At all relevant times herein, Plaintiffs' employment were subject to the provisions of the  
25 Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, et seq. and  
Plaintiffs were individual employees covered by virtue of Plaintiffs' direct engagement in  
interstate commerce.

35. The FLSA, 29 U.S.C. § 207 requires all employees to be paid overtime for work  
performed in excess of forty hours per week, unless specifically exempted by the law.

1 36. Although Plaintiffs were not so exempt during employment with Defendants, Defendants  
2 knowingly caused and permitted Plaintiffs to regularly work in excess of forty hours per  
3 week without paying Plaintiffs one and one half of Plaintiffs' regular rate of pay.

4 37. By not paying overtime wages in compliance with the FLSA, defendants violated  
5 Plaintiffs' rights under the FLSA.

6 38. As a direct and proximate result of defendants' failure to pay proper wages under the  
7 FLSA, Plaintiffs incurred general damages in the form of lost overtime wages.

8 39. Defendants intentionally, with reckless disregard for their responsibilities under the  
9 FLSA, and without good cause, failed to pay Plaintiffs proper wages, and thus defendants  
10 are liable to Plaintiffs for liquidated damages in an amount equal to lost overtime wages,  
11 pursuant to 29 U.S.C. § 216(b) of the FLSA.

12 40. Defendants therefore owe Plaintiffs overtime not properly paid to Plaintiffs, in an amount  
13 to be determined at trial.

14 41. Plaintiffs were required to retain legal assistance in order to bring this action and, as such,  
15 is entitled to an award of reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) of the  
16 FLSA.

17 **COUNT THREE: VIOLATION OF CA LABOR CODE SECTIONS 201 and 202**  
18 **FAILURE TO PAY WAGES DUE AND IMPOSITION OF CA LABOR CODE**  
19 **SECTION 203 "WAITING TIME" PENALTIES**

20 42. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-41 as if fully stated  
21 herein.

22 43. At the time Plaintiffs' employment with Defendants were terminated, defendant's owed  
23 Plaintiffs certain unpaid overtime wages in amounts previously alleged.  
24  
25

1 44. Failure to pay wages owed at the end of the employment relationship required by Labor  
2 Code §§ 201 and 202 subjects the employer the payment of a penalty equaling up to 30  
3 days wages, as provided for in Labor Code § 203.

4 45. As of this date, Defendants have failed and refused, and continue to fail and refuse, to pay  
5 the amount due, thus making defendants liable to Plaintiffs for penalties equal to thirty  
6 (30) days wages, in an amount to be determined at trial.

7 46. Pursuant to Labor Code Section 218.5, Plaintiffs requests that the court award Plaintiffs  
8 reasonable attorney's fees and costs incurred in this action.

9 47. Pursuant to Labor Code Section 218.6, Plaintiffs requests that the court award interest on  
10 all due and unpaid wages, at the legal rate specified by Civil Code Section 3289(b),  
11 accruing from the date the wages were due and payable.

12 **COUNT FOUR: VIOLATION OF CA BUSINESS AND PROFESSIONS CODE**  
13 **SECTION 17200 UNFAIR BUSINESS PRACTICES**

14 48. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-47 as if fully stated  
15 herein.

16 49. At all times relevant herein, Plaintiffs' employment with Defendants were subject to the  
17 California Labor Code and applicable Wage Orders promulgated by the California  
18 Industrial Welfare Commission, which required all employees to be paid overtime for  
19 work performed in excess of forty hours per week or eight hours per day, unless  
20 specifically exempted by law.

21 50. At all times relevant herein, as the employer of Plaintiffs, defendants were subject to the  
22 California Unfair Trade Practices Act (California Business and Professions Code §  
23 §17000 et seq.), but failed to pay the Plaintiffs overtime pay as required by applicable  
24 California Labor Code and applicable Wage Orders.  
25



1 51. During the period Plaintiffs were employed with Defendants, Defendants failed to pay  
2 Plaintiffs legally required overtime pay to which he were legally entitled, with defendants  
3 keeping to themselves the amount which should have been paid to Plaintiffs.

4 52. In doing so, defendants violated California Unfair Trade Practices Act, Business and  
5 Professions Code §17200, et seq. by committing acts prohibited by applicable California  
6 Labor Code provisions, California Wage Orders, and the FLSA, thus giving them a  
7 competitive advantage over other employers and businesses with whom defendants were  
8 in competition and who were in compliance with the law.

9 53. As a direct and proximate result of defendants' violations and failure to pay the required  
10 overtime pay, the Plaintiffs' rights under the law were violated and the Plaintiffs incurred  
11 general damages in the form of unpaid wages in an amount to be determined at trial.

12 54. Defendants had been aware of the existence and requirements of the Unfair Trade  
13 Practices Act and the requirements of State and Federal wage and hour laws, but willfully,  
14 knowingly, and intentionally failed to pay Plaintiffs overtime pay due.

15 55. Plaintiffs, having been illegally deprived of the overtime pay to which he were legally  
16 entitled, herein seeks restitution of such wages pursuant to the Business and Professions  
17 Code §17203 in an amount to be determined at trial.

18 **COUNT FIVE: VIOLATION OF CALIFORNIA LABOR CODE SECTION 226**

19 **INADEQUATE PAY STATEMENTS**

20 56. Plaintiffs re-allege and incorporate the allegations of paragraphs 1-55 as if fully stated  
21 herein.

22 57. California Labor Code Section 226 provides that all employers shall provide to employees  
23 accurate and complete wage statements including, but not to limited to, an accurate and  
24 current statement of all rates paid for all regular and overtime hours worked during the  
25 pay-period, a complete and itemized statement of deductions, net wages earned, the dates

1 fir which payment is being made, any and all applicable piece rates, and the current  
2 address ad name of the employer.

3 58. California Labor Code Section 226 further provides that any employee suffering injury  
4 due to a willful violation of the aforementioned obligations may collect the greater of  
5 either actual damages or 50\$ for the first inadequate pay statement and 100\$ for each  
6 inadequate statement thereafter.

7 59. During the course of Plaintiffs' employment, defendants consistently failed to provide  
8 Plaintiffs with adequate pay statements as required by California Labor Code §226.

9 60. Defendants failed to provide such adequate statements willingly and with full knowledge  
10 of their obligations under Section 226.

11 61. Defendants' failure to provide such adequate statements has caused injury to the  
12 Plaintiffs.

13 62. Plaintiffs are therefore legally entitled to recover actual damages caused by defendants'  
14 failure to provide proper records, in an amount to be determined at trial.

15 63. Plaintiffs has incurred costs and fees in bringing this action and seeks to recover such  
16 costs under California Labor Code §226.

17 **COUNT SEVEN: NEGLIGENT RETENTION, SUPERVISION AND TRAINING OF**  
18 **A MANAGING EMPLOYEE OR AGENT**

19 64. Plaintiff incorporates each allegation set forth in paragraphs 1 through 63.

20 65. At times as mentioned in this complaint, Defendants negligently trained, retained and supervised  
21 their managing agent and supervisory employees. Defendants failed to exercise reasonable care in  
22 the supervision, retention and training of employees including but not limited to failing to  
23 adequately supervise and train employees on the laws concerning the payment of wages and wage  
24 discrimination. More specifically America's Copper Repipe Specialist Inc., failed to supervise  
25

1 and/or train their managing agent Robie Dobkins and Plumbers On Call Inc. to properly pay their  
2 employees.

3 66. Defendants negligently failed to investigate the background of their supervisory employees and  
4 managing agents, including but not limited to America's Copper Repipe Specialist Inc., failure to  
5 supervise and/or train their managing agent Robie Dobkins and Plumbers On Call Inc. Defendants  
6 failed to take reasonable steps to protect Plaintiffs' wages and Plaintiffs from wage discrimination.

7 67. Defendants failed to supervise his employees including but not limited to managing agent and their  
8 employees/agents knew or reasonably should have known that the conduct and acts of omission set  
9 forth above violated Plaintiffs rights under state and federal law.

10 68. Defendants knew or should have known that unless he intervened to protect Plaintiffs and to  
11 adequately supervise, regulate, or discipline the conduct of their managing agents, they ratified the  
12 acts or omissions of their managing agents. America's Copper Repipe Specialist Inc., failure to  
13 supervise and/or train their managing agent Robie Dobkins and Plumbers On Call Inc. served to  
14 ratify Robie Dobkins and Plumbers On Call Inc failure to pay Plaintiffs' wages.

15 69. As a result of the aforementioned behavior of Defendant, plaintiffs have suffered and continue to  
16 suffer damages, in the form of lost wages and other employment benefits, and severe emotional and  
17 physical distress, the exact amount of which will be proven at trial.

18 70. Defendants and each of them acted for the purpose of causing plaintiff to suffer financial loss and  
19 severe emotional distress and physical distress and are guilty of oppression and malice, justifying an  
20 award of exemplary and punitive damages.

21  
22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiffs prays for the following relief:

24 71. For compensatory damages per CA Labor Code §1194 for unpaid overtime wages in an  
25 amount to be determined;

1 72. For liquidated damages per the FLSA equal to unpaid overtime wages in an amount to be  
2 determined at trial;

3 73. For restitution of unpaid overtime pay pursuant to California Business and Professions  
4 Code §17203 in an amount to be determined at trial;

5 74. For waiting time penalty damages of thirty days wages to Plaintiffs, pursuant to California  
6 Labor Code § 203 in an amount to be determined at trial;

7 75. Damages and penalties for inadequate pay statements pursuant to California Labor Code  
8 Section 226 in an amount to be determined at trial;

9 76. For pre-judgment interest of 10% on the unpaid overtime compensation and unpaid  
10 salaries pursuant to California Labor Code §1194(a);

11 77. Plaintiffs asks the court to award reasonable attorney's fees pursuant to California Labor  
12 Code §1194(a) and 29 U.S.C. §216(b) of the FLSA;

13 78. For costs of suit herein; and

14 79. For such other and further relief as the Court may deem appropriate.

15  
16 July 23, 2008

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ATTORNEY FOR PLAINTIFFS

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

VICTOR CARBAJAL, RODOLFO	)	Case No:
HERNANDEZ, ISRAEL LOPEZ,	)	
FRANCISCO PLANCARTE, JESUS	)	DEMAND FOR JURY TRIAL
PLANCARTE, ANTONIO RUIZ, JOSE	)	
VALDEZ, VICTOR VELAZQUEZ,	)	
FERNANDO CHAVEZ AND DOES 1-10	)	
Plaintiffs,	)	
vs.	)	
ROBIE H DOBKINS dba PLUMBERS ON	)	
CALL INC., GRANT J HALLSTROM dba	)	
AMERICA'S COPPER REPIPE SPECIALIST	)	
INC., dba REPIPE SPECIALIST INC. AND	)	
DOES 1-10	)	
Defendants	)	

July 23, 2008

Plaintiffs demand a jury trial.

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